Filed 5/17/10 Allred v. Shaw CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GAYLON SCOTT ALLRED et al.,	
Plaintiffs and Appellants,	G042305
v.	(Super. Ct. No. 30-2008-0014573)
TIFFANY SHAW,	O P I N I O N
Defendant and Respondent.	

Appeal from an order of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

John F. Hodges; and Mike F. O'Brien for Plaintiffs and Appellants.

Law Office of Dennis P. Gauhan, Dennis P. Gauhan and Christopher J. Skorina for Defendant and Respondent.

* * *

Plaintiffs Gaylon Scott Allred and Billie Jo Allred appeal from an order quashing service of summons on defendant Tiffany Shaw. (Code Civ. Proc., §§ 418.10, subd. (a)(1), 904.1, subd. (a)(3) [order quashing service is appealable order].)[1] We affirm the court's order. The court justifiably found the Allreds were not actually "ignorant" under section 474 of Tiffany's[2] identity when they filed the complaint. Thus, the Allreds' attempt to amend the complaint to replace a Doe defendant with Tiffany after the applicable statute of limitations had run was ineffective.

FACTS

On November 17, 2006, the Allreds and Tiffany were involved in an automobile accident in Laguna Beach. The parties exchanged contact and insurance information after the incident; Tiffany provided the Allreds with her driver's license, insurance information, and phone number. The Allreds' insurance company subsequently contacted Tiffany by phone and letter. Tiffany received letters from the Allreds' insurance company, dated November 21, 2006, which are specifically addressed to her. Roger Shaw, Tiffany's father and the registered owner of the vehicle Tiffany was driving, received a phone call on November 21, 2006, from the Allreds' insurance company. Roger explained to the caller that he was not involved in the accident.

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[1] All statutory references are to the Code of Civil Procedure. The trial court questioned whether a motion to quash service of summons was the appropriate procedural vehicle for litigating the issues in this case, but the parties stipulated to having the substance of their dispute decided under the motion presented and the parties do not address the procedural question on appeal. Thus, we assume without deciding that the issues on appeal are appropriately addressed on a motion to quash service of summons.

[2] We must also refer in this opinion to Tiffany's father, Roger Shaw. We refer to Tiffany and Roger by their first names for the sake of clarity.

The Allreds commenced this action on November 12, 2008, days before the expiration of the applicable two-year statute of limitations. (See § 335.1.) The complaint named as defendants Roger Shaw and Doe defendants. On November 19, 2008, the Allreds filed an amendment to the complaint indicating the true name of Doe 1 as Tiffany Yi Jia Shaw. Tiffany filed a motion to quash service of summons on her, claiming the complaint improperly utilized the procedures of section 474 because the Allreds were not "ignorant" of Tiffany's name. The motion was accompanied by declarations from Tiffany and Roger attesting to the facts set forth above.

In response to the motion to quash, the Allreds did not submit a declaration to explain the absence of the name Tiffany Shaw in the complaint. Instead, their attorney submitted a declaration, which stated in relevant part: "On March 26, 2008 I was contacted by the plaintiffs in the above matter from their home in the state of Texas to represent them in a case involving personal injuries from an automobile collision which occurred on November 17, 2006 in Laguna Beach, California. I was provided with basic facts of the automobile collision which included basic facts of the accident, injury and treatment information, and insurance company information, but did not include the names of the responsible party vehicle driver or owner."

"Over the next several months, my office communicated with [an insurance adjuster] concerning the claim, obtained medical records and billings from the plaintiffs' treating facilities and remained in contact with the plaintiffs with respect to their injuries and treatment which were ongoing." "On November 12, 2008, given the impending statute of limitations, a complaint was prepared and filed with the Orange County Superior Court. In reviewing the file and noting that we had no information with respect to the identity of the responsible party, with the exception of the name of Roger Shaw on correspondence from Century National Insurance, I contacted both plaintiffs and [the insurance adjuster] to obtain additional information. As no information was received from either source, suit was filed against Roger Shaw who was identified as the insured

on the insurance company correspondence." "At no time prior to filing the complaint did I ever inquire of or receive correspondence from plaintiffs' auto insurance carrier as to the identity of defendant's driver." "After filing the complaint, I was informed by plaintiffs that they had searched documentation and found that the driver of the vehicle was Tiffany Shaw. Immediately upon discovering that information an amendment to complaint was prepared and sent to the court for filing."

The court granted an order quashing service of summons on Tiffany. The court further dismissed with prejudice the case against Tiffany on the grounds that the statute of limitations had run.

DISCUSSION

Our review of the court's order is for substantial evidence supporting its factual findings and de novo as to the court's conclusions of law. (*Westfour Corp. v. California First Bank* (1992) 3 Cal.App.4th 1554, 1558.)

"The general rule is that an amended complaint that adds a new defendant does not relate back to the date of filing the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed." (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176 (*Woo*).) Clearly, the statute of limitations for the Allreds' claim (§ 335.1) had run by November 19, 2008, when the Allreds filed an amendment purporting to indicate that the true name of Doe 1 defendant was Tiffany Ji Jia Shaw.

"When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint . . . and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly." (§ 474.) "A plaintiff ignorant of the identity of a party responsible for damages may name that person in a fictitious capacity, a Doe defendant, and that time limit prescribed by the applicable statute of limitations is extended as to the unknown defendant. A plaintiff has three years under section [583.210] after the commencement of the action to discover the identity of the unknown defendant and effect service of the complaint. [Citation.] When the complaint is amended to substitute the true name of the defendant for the fictional name, the defendant is regarded as a party from the commencement of the suit." (*Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 946, fn. omitted.)

The issue before us is whether the Allreds were entitled to use the procedure set forth in section 474. Were the Allreds "ignorant" of Tiffany's name? Did the Allreds "discover" Tiffany's name after the statute of limitations had run even though they had already been provided with Tiffany's name immediately after the accident?

Neither of the Allreds submitted declarations explaining the state of their knowledge on the date the complaint was filed. Their attorney's declaration is cryptic. He certainly establishes that *he* was ignorant of Tiffany's name until after the complaint was filed. And he states he attempted to obtain this information before filing the complaint by contacting the Allreds and the insurance adjuster. He also purports to establish (through hearsay) that the Allreds informed him after the complaint was filed that "they had searched documentation and found that the driver of the vehicle was Tiffany Shaw." But nothing in the attorney's declaration clarifies precisely why the identity of Tiffany was not communicated to the attorney before the filing of the complaint. Had the Allreds forgotten the name? Were they unable to find the

"documentation" that included the name? Or did they simply not respond to their attorney's request until after the filing of the complaint?

The Allreds' appellate briefs are premised on a version of the facts in which they could not remember Tiffany's name and could not find the information in time to file the complaint. But this version of events is not supported by the evidence in the record. Speculation based on hearsay testimony is required to conclude the Allreds forgot the name before the complaint was filed. At the very least, the trial court was not obligated to make the inference posited by the Allreds.

We need not examine whether the Allreds could have proceeded under section 474 had they credibly claimed (in admissible declarations) they "forgot" the name of Tiffany at the time of filing the complaint. (Compare *Woo, supra,* 75 Cal.App.4th at p. 180 [in summary judgment context, "to use the section 474 relation-back doctrine to avoid the bar of the statute of limitations the plaintiff [who is claiming forgetfulness] must have at least reviewed readily available information likely to refresh his or her memory"]; *Balon v. Drost* (1993) 20 Cal.App.4th 483, 490 [reversing order quashing service of summons and holding a plaintiff who forgets the defendant's name, then fails to perform a reasonable inquiry before filing the complaint, is still entitled to utilize section 474, at least where the complaint is amended soon after filing].) Here, it is sufficient to observe that the court was justified in finding the record did not support an inference that the Allreds were entitled to utilize section 474.

DISPOSITION

The order quashing service of summons is affirmed. Tiffany shall recover her costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, ACTING P. J.

ARONSON, J.